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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,581	09/16/2003	Steven Thiele	HONZ 2 00011	3294
7590	09/16/2004		EXAMINER	
Erik J. Overberger, Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2518			COLETTA, LORI L	
			ART UNIT	PAPER NUMBER
			3612	
DATE MAILED: 09/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/663,581	THIELE ET AL.	
	Examiner Lori L. Coletta	Art Unit 3612	<i>NLW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,4,6-8,18 and 19 is/are rejected.
- 7) Claim(s) 2,5,9-17,20 and 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12182003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Drawings

1. The drawings are objected to because two reference characters **148** in **Figure 5** are shown and one is reference character 148 is missing a led line. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. **The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures.** If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The abstract of the disclosure is objected to because "bed floor is provided" (page 22, line 4). The abstract should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc. Correction is required. See MPEP § 608.01(b).

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3. The disclosure is objected to because of the following informalities:

“copending U.S. patent application entitled “Improved Frame Structure For Vehicle Tailgate” filed __concurrently with this application” [0020] needs to be changed to --copending U.S. patent application 10/663,138 entitled “ ~~Improved~~ Frame Structure For Vehicle Tailgate” filed September 16, 2003 concurrently with this application--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 6-8, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Coker et al. 3,387,406.

Regarding claim 6, Coker et al. ‘406 discloses a dual mode hinge assembly for use with a dual mode tailgate (12), the dual mode hinge assembly comprising a body bracket assembly (18) mounted to a sidewall (19) defining a vehicle load-carrying bed; a tailgate bracket assembly (16) mounted to a tailgate (17) that extends across an open edge of the vehicle load-carrying bed; a first rotatable connection between the tailgate bracket and the body bracket assembly having a first pivot axis (26) generally parallel with a bottom edge of the tailgate; and a second rotatable connection between the tailgate bracket assembly and the body bracket assembly having a second pivot axis (25) generally parallel with a lateral edge of the tailgate in Figures 1 and 2.

Regarding claim 7, Coker et al. '406 discloses the dual mode hinge assembly further including a rotatable member (24) between the body bracket assembly (18) and the tailgate bracket assembly (16), the rotatable member pivotally connected to the body bracket assembly (18) about the first pivot point axis (26) to form the first rotatable connection and pivotally connected to the tailgate bracket assembly (16) about the second pivot axis (25) to form the second rotatable connection.

Regarding claim 8, Coker et al. '406 discloses the dual mode hinge assembly further including a first pivot pin (23) extending through the rotatable member (24) along the first pivot axis (26) and rotatably secured to the body bracket assembly (18); and a second pivot pin (21) extending through the rotatable member (24) along the second pivot axis (25) and rotatably secured to the tailgate bracket assembly (16).

Regarding claim 18, Coker et al. '406 discloses a tailgate assembly adapted to be mounted along an open edge of a vehicle's load-carrying bed wherein the tailgate is able to alternatively pivot about (1) an axis generally parallel with a bottom edge of the tailgate for movement between a closed position and a fold-open position and (2) an axis generally parallel with a lateral edge of the tailgate for movement between the closed position and a swing-open position, the tailgate assembly comprising a tailgate selectively closing an open end of an associated vehicle load-carrying bed; a dual hinge assembly mounted to the tailgate adjacent a corner of the tailgate formed at an intersection of a bottom edge of the tailgate and a first lateral edge of the tailgate; a first selectively operable hinge mounted to the tailgate adjacent corner of the tailgate formed at an intersection of the bottom edge of the tailgate and a second lateral edge of the tailgate, the first selectively operable hinge cooperating with the dual mode hinge

assembly to pivotally support the tailgate about a first pivot axis; a second selectively operable hinge mounted to the tailgate adjacent a corner of the tailgate formed at an intersection of a top edge of the tailgate and the first lateral edge of the tailgate, the second selectively operable hinge cooperating with the dual mode hinge assembly pivotally support the hinge about a second pivot axis.

Regarding claim 19, Coker et al. '406 discloses a dual hinge assembly for use with a dual mode tailgate, the dual mode hinge assembly comprising a body bracket assembly (18) mounted to a sidewall (19) defining a vehicle load-carrying bed; a tailgate bracket assembly (16) mounted to a tailgate (17) that extends across an open edge of the vehicle load-carrying bed; a rotatable member (24) between the body bracket assembly and the tailgate bracket assembly, the rotatable member pivotally connected to the body bracket assembly and pivotally connected to the tailgate bracket assembly, the tailgate bracket assembly and the rotatable member together moveable relative to the body bracket assembly about a second pivot axis to move the tailgate in a fold-down direction, the tailgate bracket assembly moveable relative to the rotatable member about a second pivot axis to move the tailgate in a swing-open direction.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sturgis 5,398,987 in view of Coker et al. 3,387,406.

Regarding claim 1, Sturgis '987 discloses a vehicle load-carrying bed (14) comprising a generally rectangular bed floor; a front wall extending upwardly adjacent a front edge of the bed floor; a first side wall extending upwardly adjacent a first side edge of the bed floor; a second side wall extending upwardly adjacent a second, opposite side edge of the bed floor; a tailgate (18) positioned along a rear edge of the bed floor and extending between the first and second sidewalls in Figure 1.

However, Sturgis '987 does not show a dual axis hinge pivotally connecting the tailgate to the first side wall for movement about a first axis generally parallel with the rear edge of the bed floor and alternative movement about a second axis generally parallel with a vertical bed edge of the first side wall, the hinge including a checker for urging the tailgate into pre-selected positions when the tailgate is moved about the second axis.

Coker et al. '406 shows a dual axis hinge pivotally connecting the tailgate (12) to the first side wall for movement about a first axis generally parallel with the rear edge of the bed floor and alternative movement about a second axis generally parallel with a vertical bed edge of the first side wall, the hinge including a checker (27) for urging the tailgate into pre-selected positions when the tailgate is moved about the second axis in Figure 1.

Regarding claim 1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the vehicle load-carrying bed of Coker et al. '406 with a dual axis hinge pivotally connecting the tailgate to the first side wall for movement about a first axis generally parallel with the rear edge of the bed floor and alternative movement about a second axis generally parallel with a vertical bed edge of the first side wall, the hinge including a checker for urging the tailgate into pre-selected positions when the tailgate is moved about the

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second axis, as taught by Coker et al. '406, in order to provide the advantages of both a rear door and a tailgate. When used as a door, the tailgate provides a vertical door-like opening giving unobstructed access to the cargo carrying area. When used as a tailgate, and if left in the open position, the tailgate provides an extension of the cargo carrying area for article which may be longer than the cargo carrying length of the truck when the door in its closed position.

Regarding claim 3, Sturgis '987, as modified, discloses vehicle load carrying bed wherein the dual axis hinge includes a body bracket assembly (18) connected to the first sidewall (19); a tailgate bracket assembly (16) connect to the tailgate (17), the tailgate bracket assembly pivotally connected to the body bracket assembly about the first axis and pivotally connected to the body bracket assembly about the second pivot axis in Figure 2.

Regarding claim 4, Sturgis '987, as modified, discloses vehicle load carrying bed wherein the body bracket assembly (18) has a base portion having through holes for bolting to the first side wall (19) in Figure 2.

Allowable Subject Matter

8. Claims 2, 5, 9-17, 20 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited references show several other dual mode hinge assemblies for use with a dual mode tailgate similar to that of the current invention.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori L. Coletta whose telephone number is (703) 306-4614. The examiner can normally be reached on Monday-Friday 6:00am-2:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lori L. Coletta

Lori L. Coletta
Primary Examiner
Art Unit 3612

llc

September 13, 2004